

**Summary of IDEM Workgroup Meeting  
ANTIDEGRADATION/OSRW**

Wednesday, January 21, 2004

Tippecanoe Cooperative Extension Office

3150 Sagamore Parkway South

Lafayette, Indiana

10:00a.m. – 3:00p.m. E.S.T.

**Introduction:**

On Wednesday, January 21, 2004, IDEM staff met for the fifteenth time with a wide cross-section of stakeholders which make up the Antidegradation/OSRW workgroup. These notes are intended to be a summary of the major points from the meeting held at the Tippecanoe Cooperative Extension Office.

The meeting was called to order by Mary Ellen Gray.

Workgroup members in attendance for all or part of the meeting included: Art Umble; Bill Beranek; Charlotte Read (by speakerphone); Kent Halloran; Ralph Roper, and Tom Simon (by speakerphone).

Other participants included: Albert Ettinger, Environmental Law and Policy Center (ELPC) and Sierra Club; David Pfeifer, U.S.EPA, Region 5; Eric Fry (by speakerphone), Black Beauty Coal; Tim Lohner (by speakerphone), American Electric Power; and Zach Bishton, Indiana Association of Cities and Towns (IACT).

In addition, the following IDEM staff members were present for all or part of the meeting: Dave Kallander, Denny Clark, John Nixon, Larry Wu, and Megan Wallace.

**Summary:**

The workgroup discussed the following:

- A. Mary Ellen Gray reviewed the agenda and also stated that she wanted to add the 205(j) grant to the agenda. She said she would like to solicit comments from the workgroup on how to spend the money and that we could talk about it at the end of the meeting. Charlotte Read asked who to send comments to and Mary Ellen replied to send them to her. Mary Ellen also explained that the two documents (attached to the minutes for your convenience) handed out at the beginning of the meeting were two versions of changes to section 7 draft language from the rainbow version of the draft rule. IDEM produced one version of changes, while Albert Ettinger produced the other.
- B. Hobart Update. The city of Hobart has applied for a new wastewater treatment plant permit to discharge to the Grand Cal and eventually to Lake Michigan. Rather than

filing a full antidegradation demonstration, the applicant opted to meet permit limits that do not lower water quality.

C. Discussion on IDEM's handout of changes to Section 7 Antidegradation demonstration and determination

1. Dave Kallander reviewed the changes to the draft language stating that most of the changes were made to subsection (d) and some of the language was taken from the Ohio rule. Subsection (d) was made more general to allow for more flexibility. This would allow for a trailer park's antideg demonstration to be different than an antideg demonstration for a larger entity. Dave said that we might want to change the "shall" in subsection (d) to a "may".
2. Some workgroup members say that "shall" may need to be used since the list was made more general.
3. John Nixon says that basically we want to have requirements that will allow the commissioner to get the information that she needs to make a determination.
4. Art Umble asks if he is suggesting that IDEM will not have a guidance document to go along with this rule.
5. John says he is not saying that, but a guidance document is not law and doesn't have the effect of a rule requirement.
6. Albert says that IDEM may want some of the information in subdivisions (1) and (2), but may not want some of the other information. Therefore, there should be a "shall" in subsection (d) and a "may" in subdivisions (1) and (2).
7. Denny Clark says that the economic benefits and economic costs should be included as a requirement. He suggests using a "may" for the list of specifics in subdivision (1) and using a shall in subdivision (2). He says the point is that this list may not be the information that IDEM needs to make a determination, but if we make it that prescriptive, that is the information that IDEM will get. He thinks, for this reason, that it is better to require "something", but to leave the specifics flexible.
8. Bill Beranek suggests that "industrial, commercial, or residential growth in the community" should be listed first in subdivision (1), "number and types of jobs" should be listed second, and that this subdivision should be listed out as (A), (B), and (C).
9. Art and Ralph Roper suggest that "recreation" in subdivision (2) should be expanded to give more examples. Companies will have less incentive to look at subdivision (2) closely, so expanding "recreation" would give companies more to think about.
10. Albert says that subsection (d) is limited to things that aren't publicly owned treatment works (POTWs). He doesn't think that everything a POTW does should be exempted from an Antideg review. The category may also need to be broadened to include other dischargers that are like POTWs. Art was concerned that this might be a lot of work for just a few instances.
11. Charlotte suggests that we lay this issue out on the table, but move on for now. Albert agrees.
12. Albert brings up subsection (c) and discusses indirect dischargers.

13. Bill says the subsection says who is responsible for doing the demonstration. A POTW can make the indirect discharger do the demonstration or the POTW can do the demonstration themselves.
14. Albert clarifies that he is talking about the kind of development that would fall through the cracks if all POTWs were exempt all of the time. He gives an example of a golf course or other big development that will be discharging into a POTW and in turn cause the POTW to expand. He says that this should not be excluded.
15. John says that (d) includes POTW who are increasing due to an indirect discharger. Albert asks what an indirect discharger is defined as. John read the definition and it does not include domestic dischargers.
16. Art wants to know how to treat this situation because a theme park may be built in the next five (5) years that will discharge into his POTW. Do you skip subsection (d) or not. Albert says that subsection (d) should not be skipped.
17. John states that everyone will have to do what is required in subsection (b). Subsection (d) are just extra requirements.
18. Denny suggests adding language under subsections (b) or (c) that says the commissioner has the right to request the information in subsection (d) from other projects. Albert says that is one way to address it. Another way is the way Illinois did it, which makes everyone go through (d), but adds a shortcut.
19. Dave says that IDEM always welcomes proposed language and that anyone can send it in after the meeting. He says to send all comments and proposed language to Megan Wallace.
20. Albert says that under subsection (d) there may be things that do not act like a POTW that you want to give them a pass. E.g., Girl Scout camps. In Illinois, they are not called POTWs but “dischargers of domestic wastes”. Denny was concerned with small package plants.
21. Albert says that in his version of the language, he switched subsections (c) and (d). He thought that subsection (c) was a special case and didn’t make sense to put it before subsection (d). The workgroup agreed.
22. Dave discusses subsection (g) and says that he added about the same thing that Albert added in his version.
23. Bill doesn’t think that the term “legislative body” should be used in (g)(1)(M). John suggests using whatever our state statute uses for local units of government. Bill suggests that people who should be able to comment include all affected parties.
24. Charlotte brings up the issue of having best available technology (BAT) in the rule.
25. Art wants clarification on what “existing and designated uses” are in (g)(3). Albert says that is the federal law.
26. Bill wants (g)(3) out. He thinks it is redundant and a trip wire. Denny, Dave Pfeifer, and Albert say it may be redundant, but it is a good reminder.
27. Charlotte brings up language in 40 CFR 131.12. She says it should be in our draft rule. John asks Charlotte if section 3, subsections (a) and (b) on pages 19 and 20 addresses her concern. Charlotte says it is, but it only applies to Tier 2 and should apply to Tier 1. She is told that Tier 2 applies to all waters.

28. Bill is wondering if it is useful to consider biological diseases? Denny says if the agency were concerned enough it could be in the permit.

D. After lunch, discussion on Albert Ettinger's handout of changes to section 7  
Antidegradation demonstration and determination

1. Albert says he took out yellow language in subsection (a) because it was based on a different concept than SEA 431.
2. The group wanted to cross out the word "reissued" because Indiana does not use that term.
3. Albert wants to combine (b)(4) with (b)(1).
4. In reference to (b)(2), Art asks if he is planning to discharge to a stream where no data are available, assuming it would take three (3) to four (4) years to collect enough data to do an IBI, is the project supposed to be delayed that long?
5. Tom Simon suggests there is a way to do more intensive sampling within one (1) year.
6. Art thinks (b)(2) should say exactly what IDEM expects for a "characterization of a water body" or no matter what someone does, it may not be enough.
7. Charlotte comments that Ohio and some other states bring in DNR to help out with some of these aspects. Tom says that DNR and USFWS have a database that they are working on which contains information dated back to 1912. Hopefully the database will be up and running and online so that people can look up information himself or herself instead of requesting it.
8. Albert suggests in most cases, knowledge of what is in the water is needed before something else is added. Art agrees, but is concerned about what and how much data is enough. Art suggests that this will be a huge concern for outside people.
9. Ralph suggests that it is reworded to say, "An identification and characterization of the water body to the extent it affects physical, biological, and chemical conditions of the water body". Mary Ellen suggests that Dave take a crack at some new language for (b)(2).
10. Megan Wallace asked the group if they wanted their comments sent out to the whole workgroup. The workgroup said yes. Megan said she would assume everything she is sent is for the whole group's review, unless specifically asked otherwise.
11. Ralph suggests taking the word "any" out of (b)(3)(A) and just begin the sentence with "Pollution prevention alternatives".
12. Albert says that Bowden Quinn was going to take a crack at breaking subsection (f) into "shalls" and "mays", but doesn't want to go into the subject since Bowden was not at the meeting.
13. Charlotte wants to know how much subsection (f) has increased IDEM's workload. Mary Ellen isn't sure, but doesn't seem to notice a big burden so far.
14. Albert added even more to subsection (g) than IDEM did. He added (g)(2). Art likes the language but he thinks subdivisions (1) and (2) should be moved after the rest of subsection (g). Albert agrees and notes that IDEM's version did switch those subdivisions.
15. In subsection (i), Albert changed the words "in lieu of" to "in addition to".

16. Albert will try to fix some of the changes and send it out to the workgroup soon.
17. Mary Ellen identified the next steps.

E. Discussion on 205(j) grant

1. Mary Ellen opened the discussion on the use of the 205(j) grant money. She said the grant was for \$149,000 and asked for ideas on how to spend the money. IDEM needs comments and ideas because it takes about three (3) months for the whole process.
2. Albert doesn't think that Antideg needs the money because it is mostly a procedural rule. Albert asked about nutrient criteria development.
3. Denny said that IDEM has an approved plan.
4. Mary Ellen is asked what she thinks the priorities for the money should be. She answers that in her own opinion, she thinks facilitating meetings, research on what other states are doing, and pulling all of this information together are priorities. Ralph says the money could help support the public database.
5. The workgroup suggests providing funding to bring people to meetings.
6. Albert asks if the grant can be written to include many activities. Mary Ellen answers yes.

F. The minutes from the December 15, 2003 meeting were approved with no changes.

G. Next Steps include:

1. Albert reworking section 7 language on antidegradation demonstration and determination
2. Dave is going to rework section 7 language on antidegradation demonstration and determination including comments from today's meeting and from the comments that Albert will be sending.
3. Continue working through issues list

H. The next meeting is set for Wednesday, February 18, 2004 at the Tippecanoe Cooperative Extension Office, 3150 Sagamore Parkway South, Lafayette, Indiana from 10:00a.m. to 3:00p.m. E.S.T.

**IDEM's suggested changes – 01/21/04**

**327 IAC 2-1.3-7 Antidegradation demonstration and determination**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 7. (a) If the provisions an exemption listed in section 6 of this rule does not apply the existing or proposed new discharger must submit an antidegradation demonstration to the commissioner in accordance with this section before applying for a facility construction permit pursuant to 327 IAC 3, if applicable, or for a new, renewed, or modified control document.**

**(b) All antidegradation demonstrations shall contain the following elements:**

**(1) An identification of all pollutants for which the antidegradation demonstration is required.**

**(2) An identification of measures available to the existing or proposed discharger to minimize or prevent the proposed lowering of water quality. A separate analysis shall be performed for each pollutant for which there may be significant lowering of water quality. Each analysis shall include the following:**

**(A) Any cost-effective pollution prevention alternatives and techniques available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.**

**(B) Alternative or enhanced treatment techniques available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and enhanced treatment techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations. This analysis shall include an evaluation of the feasibility and costs of connecting to an existing publicly or privately owned treatment works.**

**(3) Documentation showing that the existing or proposed discharger has made a good faith effort to provide notice to all government or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving water body in the area of the new or increased discharge. The notice shall include a list of the parameters for which a significant lowering of water quality is proposed.**

**(4) An identification of the current concentration and projected concentration, if lowering is allowed, of any bioaccumulative chemicals of concern (BCCs) for which the antidegradation demonstration is being submitted.**

**(c) For publicly owned treatment works (POTWs), if the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also include the following:**

**(1) The requirements of subsection (b)(2)(A) and (b)(2)(B) shall be completed for the indirect discharger(s) as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.**

**(2) If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer (or to a sanitary sewer that is connected to a combined sewer), all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.**

**(d) For dischargers that are not POTWs and for POTWs for which the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also contain an evaluation of the positive and negative social or economic development impacts to the area in which the receiving waters are located that will occur if the significant lowering of water quality is allowed. The POTW may require the indirect dischargers to prepare this information. This evaluation shall include the following:**

**~~(1) An evaluation of the baseline economic condition, including the following:~~**

**~~(A) The unemployment rate in the area.~~**

**~~(B) The population in the area.~~**

**~~(C) The average household income relative to state and national averages.~~**

**~~(D) The percentage of the population living below the poverty level.~~**

**~~(2) Information on the anticipated net positive impacts attributable to the activity that will result in the new or increased discharge, including the following:~~**

**~~(A) The increase in employment, or avoidance of a reduction in employment at the facility.~~**

**~~(B) The reduction in the local unemployment rate attributable to the facility.~~**

~~(C) The total annual payroll of nonofficers for the new or increased employment, and the average annual wage for the new, nonofficer employees. In lieu of this information, the applicant may provide other information that quantifies the extent of the economic benefit to be provided to the area.~~

~~(D) The increased tax revenues.~~

~~(E) The increase in production level.~~

~~(F) The increase in efficiency.~~

~~(G) The extent to which an environmental or public health problem is corrected.~~

~~(H) Industrial, commercial, or residential growth in the community.~~

~~(I) Other social or economic benefits to the community.~~

**(1) An estimate of the important social, economic and environmental benefits to be realized through the project or activity if the water quality is lowered, including, as appropriate, the number and types of jobs created, the tax revenues generated, the extent to which an environmental or public health problem is corrected, industrial, commercial or residential growth in the community or other social and economic benefits to the community**

**(2) An estimate of important social, economic and environmental benefits to be lost if water quality is lowered, such as lost or lowered recreational opportunities.**

**(e) In lieu of the information required by subsections (b) through (d), dischargers proposing:**

**(1) a response action pursuant to CERCLA;**

**(2) a corrective action pursuant to RCRA; or**

**(3) an action pursuant to similar federal or state authorities, including:**

**(A) an underground storage tank (UST) corrective action under IC 13-23-13;**

**(B) a remediation of petroleum releases under IC 13-24-1;**

**(C) a voluntary remediation under IC 13-25-5; or**

**(D) an abatement or correction of any polluted condition under IC 13-18-7;**

**may submit information to the commissioner demonstrating that the action minimizes the proposed lowering of water quality and will use the most cost effective pollution prevention and treatment techniques available.**

**(f) Upon receipt of an antidegradation demonstration, the commissioner shall provide notice, request comment, and may, if requested, schedule and hold a public meeting on the application in accordance with section 10 of this rule. The commissioner shall quantify the increased risk to human health due to new or increased discharges of BCCs. This information shall be available for inspection and copying as a public record before the public meeting is held.**



(g) Once the commissioner determines that the information provided by the discharger proposing a new or increased discharge is administratively complete, the commissioner shall make an antidegradation determination in accordance with the following:

(1) The commissioner shall consider the following:

- (A) the magnitude of the proposed lowering of water quality;
- (B) the anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;
- (C) the anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;
- (D) The degree to which water quality may be lowered in waters located within national, state or local parks, preserves or wildlife areas, or OSRWs or ONRWs;
- (E) the effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;
- (F) the extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;
- (G) the cost of the water pollution controls associated with the proposed activity;
- (H) the cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;
- (I) the availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;
- (J) the availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;
- (K) the reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;
- (L) the condition of the local economy, the number and types of new direct and indirect jobs to be created, state and local tax revenue to be generated, and other economic and social factors as the director deems appropriate;

**(M) a determination made by the legislative body of the unit of government in which the proposed discharge outfall is located that the action that will cause the lowering will support important social and economic development in the area; and**

**(N) any other information regarding the proposed activities and the affected water body that the commissioner deems appropriate.**

**(2) The commissioner shall deny the request to lower water quality if:**

**(A) cost-effective measures necessary to prevent the proposed lowering are reasonably available; or**

**(B) the action that would cause the lowering would not support important social and economic development in the area.**

**~~(3) If the legislative body of the unit of government in which the proposed discharge outfall is located determine the action that will cause the lowering will support important social and economic development in the area, in accordance with this section, the commissioner may allow all or part of the proposed lowering.~~**

**(34) In no event may the determination allow water quality to be lowered below the minimum level required to fully support existing and designated uses.**

**(h) When the commissioner proposes an antidegradation determination, it shall be summarized in the public notice form and incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9. A final antidegradation decision shall be incorporated into the final NPDES permit and fact sheet.**

Albert Ettinger's suggested changes – 1/21/04

Sec. 7. (a) If ~~the provisions an exemption~~ listed in section 6 of this rule does not apply and the existing or proposed new discharger proposing to cause a significant lowering of water quality in an OSRW does not elect to utilize the provisions in subsection (i) a person the existing or proposed new discharger proposing a new or increased discharge must submit an antidegradation demonstration to the commissioner in accordance with this section before applying for a facility construction permit pursuant to 327 IAC 3, if applicable, or for a new, renewed, reissued, or modified control document.

- (b) All antidegradation demonstrations shall contain the following elements:
- (1) An identification of all pollutants for which the antidegradation demonstration is required, including the mass and concentration proposed to be discharged.
  - (2) An identification and characterization of the water body(ies) affected by the proposed load increase that addresses the physical, biological and chemical conditions of the water body.
  - (3) An identification of measures available to the existing or proposed discharger to minimize or prevent the proposed lowering of water quality. A separate analysis shall be performed for each pollutant for which there may be significant lowering of water quality. Each analysis shall include the following:
    - (A) Any ~~cost-effective~~ pollution prevention alternatives (including new and innovative technologies and means to avoid the new discharge) and techniques available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.
    - (B) Alternative or enhanced treatment techniques available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and enhanced treatment techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations. This analysis shall include

an evaluation of the feasibility and costs of connecting to an existing publicly or privately owned treatment works.

(4) Documentation showing that the existing or proposed discharger has made a good faith effort to provide notice to all government or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving water body in the area of the new or increased discharge. The notice shall include a list of the parameters for which a significant lowering of water quality is proposed.

~~(4) An identification of the current concentration and projected concentration, if lowering is allowed, of any bioaccumulative chemicals of concern (BCCs) for which the antidegradation demonstration is being submitted.~~

~~(c) For publicly owned treatment works (POTWs), if the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also include the following:~~

~~(1) The requirements of subsection (b)(2)(A) and (b)(2)(B) shall be completed for the indirect discharger(s) as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.~~

~~(2) If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer (or to a sanitary sewer that is connected to a combined sewer), all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.~~

~~(c) Except as provided in paragraph (d), For dischargers that are not POTWs and for POTWs for which the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also contain an evaluation of the positive and negative social or economic development impacts to the area in which the receiving waters are located that will occur if the significant lowering of water quality is allowed. The POTW may require the indirect dischargers to prepare this information. This evaluation shall include the following:~~

~~(1) An evaluation of the baseline economic condition, including the following:~~

~~(A) The unemployment rate in the area.~~

~~(B) The population in the area.~~

~~(C) The average household income relative to state and national averages.~~

~~(D) The percentage of the population living below the poverty level.~~

~~(2) Information on the anticipated net positive impacts attributable to the activity that will result in the new or increased discharge, including the following:~~

~~(A) The increase in employment, or avoidance of a reduction in employment at the facility.~~

- (B) The reduction in the local unemployment rate attributable to the facility.
- (C) The total annual payroll of nonofficers for the new or increased employment, and the average annual wage for the new, nonofficer employees. In lieu of this information, the applicant may provide other information that quantifies the extent of the economic benefit to be provided to the area.
- (D) The increased tax revenues.
- (E) The increase in production level.
- (F) The increase in efficiency.
- (G) The extent to which an environmental or public health problem is corrected.
- (H) Industrial, commercial, or residential growth in the community.
- (I) Other social or economic benefits to the community.

(d) Dischargers of domestic waste shall provide the information specified in (c) above if they propose

(1) a significant lowering of water quality as the result of a proposed new or increased discharge from one (1) or more indirect dischargers. The discharger of domestic waste may require the indirect discharger(s) to prepare this information. If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer (or to a sanitary sewer that is connected to a combined sewer), all combined sewer overflows (CSOs) between the point of discharge to the sewer and the discharger of domestic waste shall be identified.

(2)

[ WE NEED TO DRAFT A DEFINITION OF “DISCHARGER OF DOMESTIC WASTE”. Also we need to spell out other situations where more information must be provided by dischargers of domestic waste and what they must provide]

(e) In lieu of the information required by subsections (b) through (d), dischargers proposing:

- (1) a response action pursuant to CERCLA;
- (2) a corrective action pursuant to RCRA; or
- (3) an action pursuant to similar federal or state authorities, including:
  - (A) an underground storage tank (UST) corrective action under IC 13-23-13;
  - (B) a remediation of petroleum releases under IC 13-24-1;
  - (C) a voluntary remediation under IC 13-25-5; or
  - (D) an abatement or correction of any polluted condition under IC 13-18-7;

may submit information to the commissioner demonstrating that the action minimizes the proposed lowering of water quality and will use the most cost effective pollution prevention and treatment techniques available.

(f) Upon receipt of an antidegradation demonstration by a discharger that [ ], the commissioner shall provide notice, request comment, and [shall?] may, if requested, schedule and hold a public meeting on the application in accordance with section 10 of this rule. The commissioner shall quantify the increased risk to human health due to new or increased discharges of BCCs. This information shall be available for inspection and copying as a public record before the public meeting is held.

(g) Once the commissioner determines that the information provided by the discharger proposing a new or increased discharge is administratively complete, the commissioner shall make an antidegradation determination in accordance with the following:

(1) The commissioner shall deny the request to lower water quality if:

(A) cost-effective measures necessary to prevent the proposed lowering are reasonably available; or

(B) the action that would cause the lowering would not support important social and economic development in the area.

~~(2) If the legislative body of the unit of government in which the proposed discharge outfall is located determine the action that will cause the lowering will support important social and economic development in the area, in accordance with this section, the commissioner may allow all or part of the proposed lowering.~~

(2) The commissioner may approve activities that lower water quality only if there has been an examination of non-degradation, minimal degradation and mitigative technique alternatives, a review of the social and economic issues related to the activity, a public participation process and appropriate intergovernmental coordination, and the commissioner determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the water body is located. The commissioner may require the applicant to implement a non-degradation alternative, a minimal degradation alternative or a mitigative technique alternative to offset all or part of the proposed lowering of water quality, if the commissioner determines that the alternative is technically feasible and economically justifiable. In no event may the determination allow water quality to be lowered below the minimum level required to fully support existing and designated uses.

When making determinations regarding proposed activities that lower water quality the commissioner shall consider the following:

(a) The magnitude of the proposed lowering of water quality;

(b) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;

(c) The anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;

(d) The degree to which water quality may be lowered in waters located within national, state or local parks, preserves or wildlife areas;  
(e) The effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;  
(f) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;  
(g) The cost of the water pollution controls associated with the proposed activity;  
(h) The cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;  
(i) The availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;  
(j) The availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;  
(k) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;  
(l) The condition of the local economy, the number and types of new direct and indirect jobs to be created, state and local tax revenue to be generated, and other economic and social factors as the commissioner deems appropriate; and  
(m) Any other information regarding the proposed activities and the affected water body that the commissioner deems appropriate. ~~In no event may the determination allow water quality to be lowered below the minimum level required to fully support existing and designated uses.~~

(h) When the commissioner proposes an antidegradation determination, it shall be summarized in the public notice form and incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9. A final antidegradation decision shall be incorporated into the final NPDES permit and fact sheet.

(i) In addition to ~~lieu of~~ the provisions in subsections (b) through (h), dischargers proposing to cause a significant lowering of water quality in an OSRW shall either ~~can choose to~~ follow the provisions in ~~either~~ subdivision (1) or subdivision (2) for each activity undertaken that will result in a significant lowering of water quality in an OSRW or exceptional use water.

(1) Implementation of a water quality project in the watershed of the outstanding state resource water or the exceptional use water that will result in an overall improvement of the water quality of the outstanding state resource water or the exceptional use water.

(2) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000) based on the type and quantity of increased pollutant loadings for deposit in

the outstanding state resource water improvement fund established under IC 13-18-3-14.

Existing or proposed new dischargers electing to follow the procedures in either subdivisions (1) or (2) must follow the public notice requirements under section 10.

[criteria for submitting and approval of projects in subdivision 1 & 2]

[use of water quality data that is less than 7 years old and specific to the OSRW]

[Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water or exceptional use water.]

*(Water Pollution Control Board; 327 IAC 2-1.3-7)*